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CUMULATIVE SUPPLEMENT
TO
MISSISSIPPI CODE
1972 ANNOTATED

Issued September 2013

**CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
ENACTED THROUGH THE 2013 REGULAR SESSION
AND 1ST AND 2ND EXTRAORDINARY SESSIONS
OF THE LEGISLATURE**

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User's Guide

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the Mississippi Code of 1972 Annotated, a User's Guide has been included in the main volume. This guide contains comments and information on the many features found within the Code intended to increase the usefulness of the Code to the user.



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PUBLISHER'S FOREWORD

Statutes

The 2013 Supplement to the Mississippi Code of 1972 Annotated reflects the statute law of Mississippi as amended by the Mississippi Legislature through the end of the 2013 Regular Session and 1st and 2nd Extraordinary Sessions.

Annotations

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

- Southern Reporter, 3rd Series
- United States Supreme Court Reports
- Supreme Court Reporter
- United States Supreme Court Reports, Lawyers' Edition, 2nd Series
- Federal Reporter, 3rd Series
- Federal Supplement, 2nd Series
- Federal Rules Decisions
- Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

- American Law Reports, 6th Series
- American Law Reports, Federal 2nd
- Mississippi College Law Review
- Mississippi Law Journal

Finally, published opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

Amendment Notes

Amendment notes detail how the new legislation affects existing sections.

Editor's Notes

Editor's notes summarize subject matter and legislative history of repealed sections, provide information as to portions of legislative acts that have not been codified, or explain other pertinent information.

Joint Legislative Committee Notes

Joint Legislative Committee notes explain codification decisions and corrections of Code errors made by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation.

Tables

The Statutory Tables volume adds tables showing disposition of legislative acts through the 2013 Regular Session and 1st and 2nd Extraordinary Sessions.

Index

The comprehensive Index to the Mississippi Code of 1972 Annotated is replaced annually, and we welcome customer suggestions. The foreword to the Index explains our indexing principles, suggests guidelines for successful index research, and provides methods for contacting indexers.

Acknowledgements

The publisher wishes to acknowledge the cooperation and assistance rendered by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation, as well as the offices of the Attorney General and Secretary of State, in the preparation of this supplement.

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MISSISSIPPI CODE 1972

ANNOTATED

VOLUME FOUR

TITLE 11

CIVIL PRACTICE AND PROCEDURE

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CHAPTER 37

Replevin

§ 11-37-129. Judgment for defendant; default; writ of inquiry.

JUDICIAL DECISIONS

2. Jurisdiction.

Trial court lacked subject matter jurisdiction to enter a writ of inquiry under Miss. Code Ann. § 11-37-129 where: (1) the replevin action was filed under Miss. Code Ann. § 11-37-131 since the property was not pre-seized; (2) § 11-37-131 did not provide for a writ of inquiry; and (3) jurisdiction ended when the replevin action ended; (4) neither party appealed the

grant of defendant's motion to set aside the replevin, which was effectively a Miss. R. Civ. P. 60(b)(4) motion; and (5) the procedures for the replevin were under Miss. Code Ann. §§ 11-37-141 and 11-37-143, which did not provide for a writ of inquiry. *Magee v. Covington County Bank*, — So. 3d —, 2012 Miss. App. LEXIS 591 (Miss. Ct. App. Sept. 25, 2012).

§ 11-37-131. How replevin commenced—immediate seizure of property not sought.

JUDICIAL DECISIONS

0.5. Jurisdiction.

Trial court lacked subject matter jurisdiction to enter a writ of inquiry under Miss. Code Ann. § 11-37-129 where: (1) the replevin action was filed under Miss. Code Ann. § 11-37-131 since the property was not pre-seized; (2) § 11-37-131 did not provide for a writ of inquiry; and (3) juris-

diction ended when the replevin action ended; (4) neither party appealed the grant of defendant's motion to set aside the replevin, which was effectively a Miss. R. Civ. P. 60(b)(4) motion; and (5) the procedures for the replevin were under Miss. Code Ann. §§ 11-37-141 and 11-37-143, which did not provide for a writ of

inquiry. *Magee v. Covington County Bank*, — So. 3d —, 2012 Miss. App. LEXIS 591 (Miss. Ct. App. Sept. 25, 2012).

§ 11-37-141. Judgment for plaintiff where property not previously seized.

JUDICIAL DECISIONS

1. Jurisdiction.

Trial court lacked subject matter jurisdiction to enter a writ of inquiry under Miss. Code Ann. § 11-37-129 where: (1) the replevin action was filed under Miss. Code Ann. § 11-37-131 since the property was not pre-seized; (2) § 11-37-131 did not provide for a writ of inquiry; and (3) jurisdiction ended when the replevin action ended; (4) neither party appealed the

grant of defendant's motion to set aside the replevin, which was effectively a Miss. R. Civ. P. 60(b)(4) motion; and (5) the procedures for the replevin were under Miss. Code Ann. §§ 11-37-141 and 11-37-143, which did not provide for a writ of inquiry. *Magee v. Covington County Bank*, — So. 3d —, 2012 Miss. App. LEXIS 591 (Miss. Ct. App. Sept. 25, 2012).

§ 11-37-143. Judgment for defendant where property not previously seized.

JUDICIAL DECISIONS

1. Jurisdiction.

Trial court lacked subject matter jurisdiction to enter a writ of inquiry under Miss. Code Ann. § 11-37-129 where: (1) the replevin action was filed under Miss. Code Ann. § 11-37-131 since the property was not pre-seized; (2) § 11-37-131 did not provide for a writ of inquiry; and (3) jurisdiction ended when the replevin action ended; (4) neither party appealed the

grant of defendant's motion to set aside the replevin, which was effectively a Miss. R. Civ. P. 60(b)(4) motion; and (5) the procedures for the replevin were under Miss. Code Ann. §§ 11-37-141 and 11-37-143, which did not provide for a writ of inquiry. *Magee v. Covington County Bank*, — So. 3d —, 2012 Miss. App. LEXIS 591 (Miss. Ct. App. Sept. 25, 2012).

CHAPTER 46

Immunity of State and Political Subdivisions From Liability and Suit for Torts and Torts of Employees

SEC.

11-46-1. Definitions.

11-46-17. Creation of Tort Claims Fund; liability insurance.

§ 11-46-1. Definitions.

As used in this chapter, the following terms shall have the meanings ascribed unless the context otherwise requires:

(a) "Claim" means any demand to recover damages from a governmental entity as compensation for injuries.

(b) "Claimant" means any person seeking compensation under the provisions of this chapter, whether by administrative remedy or through the courts.

(c) "Board" means the Mississippi Tort Claims Board.

(d) "Department" means the Department of Finance and Administration.

(e) "Director" means the executive director of the department who is also the executive director of the board.

(f) "Employee" means any officer, employee or servant of the State of Mississippi or a political subdivision of the state, including elected or appointed officials and persons acting on behalf of the state or a political subdivision in any official capacity, temporarily or permanently, in the service of the state or a political subdivision whether with or without compensation, including firefighters who are members of a volunteer fire department that is a political subdivision. The term "employee" shall not mean a person or other legal entity while acting in the capacity of an independent contractor under contract to the state or a political subdivision; and

(i) For purposes of the limits of liability provided for in Section 11-46-15, the term "employee" shall include:

1. Physicians under contract to provide health services with the State Board of Health, the State Board of Mental Health or any county or municipal jail facility while rendering services under the contract;

2. Any physician, dentist or other health care practitioner employed by the University of Mississippi Medical Center (UMMC) and its departmental practice plans who is a faculty member and provides health care services only for patients at UMMC or its affiliated practice sites;

3. Any physician, dentist or other health care practitioner employed by any university under the control of the Board of Trustees of State Institutions of Higher Learning who practices only on the campus of any university under the control of the Board of Trustees of State Institutions of Higher Learning;

4. Any physician, dentist or other health care practitioner employed by the State Veterans Affairs Board and who provides health care services for patients for the State Veterans Affairs Board;

(ii) The term "employee" shall also include Mississippi Department of Human Services licensed foster parents for the limited purposes of coverage under the Tort Claims Act as provided in Section 11-46-8; and

(iii) The term "employee" also shall include any employee or member of the governing board of a charter school but shall not include any person or entity acting in the capacity of an independent contractor to provide goods or services under a contract with a charter school.

(g) "Governmental entity" means the state and political subdivisions.

(h) "Injury" means death, injury to a person, damage to or loss of property or any other injury that a person may suffer that is actionable at law or in equity.

(i) “Political subdivision” means any body politic or body corporate other than the state responsible for governmental activities only in geographic areas smaller than that of the state, including, but not limited to, any county, municipality, school district, charter school, volunteer fire department that is a chartered nonprofit corporation providing emergency services under contract with a county or municipality, community hospital as defined in Section 41-13-10, airport authority, or other instrumentality of the state, whether or not the body or instrumentality has the authority to levy taxes or to sue or be sued in its own name.

(j) “State” means the State of Mississippi and any office, department, agency, division, bureau, commission, board, institution, hospital, college, university, airport authority or other instrumentality thereof, whether or not the body or instrumentality has the authority to levy taxes or to sue or be sued in its own name.

(k) “Law” means all species of law, including, but not limited to, any and all constitutions, statutes, case law, common law, customary law, court order, court rule, court decision, court opinion, court judgment or mandate, administrative rule or regulation, executive order, or principle or rule of equity.

SOURCES: Laws, 1984, ch. 495, § 1; reenacted without change, Laws, 1985, ch. 474, § 1; Laws, 1988, ch. 479, § 2; Laws, 1993, ch. 476, § 1; Laws, 1999, ch. 518, § 1; Laws, 2002, 3rd Ex. Sess., ch. 2, § 2; Laws, 2013, ch. 385, § 1; Laws, 2013, ch. 497, § 32, eff from and after July 1, 2013.

Joint Legislative Committee Note — Section 1 of ch. 385, Laws of 2013, effective from and after passage (approved March 20, 2013), amended this section. Section 32 of ch. 497, Laws of 2013, effective from and after July 1, 2013 (approved April 17, 2013), also amended this section. As set out above, this section reflects the language of Section 32 of ch. 497, Laws of 2013, pursuant to Section 1-3-79, which provides that whenever the same section of law is amended by different bills during the same legislative session, the amendment with the latest effective date shall supersede all other amendments to the same section taking effect on an earlier date.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in (i) by substituting “contract with a county or municipality, community hospital” for “contract with a county or municipality community hospital.” The Joint Committee ratified the correction at its August 1, 2013, meeting.

Editor’s Note — Laws of 2013, ch. 385, § 6, effective March 20, 2013, provides: “SECTION 6. This act shall take effect and be in force from and after its passage [approved March 20, 2013]; volunteer fire departments shall have until July 1, 2013, to obtain and have approved the insurance policies of self-insurance reserves or combination thereof required for political subdivisions under the Tort Claims Act.”

Amendment Notes — The first 2013 amendment (ch. 385), in (f), inserted “including firefighters who are members of a volunteer fire department that is a political subdivision” to the end of the first sentence, inserted the subdivision designations, and made minor stylistic changes; in (g), deleted “and includes” preceding “and herein defined” and following “also”; rewrote (i); and made minor stylistic changes throughout.

The second 2013 amendment (ch. 497), in (f), inserted “including firefighters who are members of a volunteer fire department that is a political subdivision” at the end of the first sentence, inserted the subdivision designations and made related changes, and added (f)(iii); rewrote (i); and made minor stylistic changes throughout.

JUDICIAL DECISIONS

5. Political subdivision.

Definition of “governmental entity” included political subdivisions, and a county was a political subdivision. *Alexander v. Newton County*, — So. 2d —, 2013 Miss. App. LEXIS 197 (Miss. Ct. App. Apr. 23, 2013).

Volunteer firefighter was not immune from suit under the Mississippi Tort

Claims Act (MTCA) for claims arising from an automobile accident because the volunteer fire department was not a political subdivision of the State. Under Miss. Code Ann. § 95-9-1(3)(b), the firefighter could be liable for negligent operation of a vehicle. *Poppenheimer v. Estate of Coyle*, 98 So. 3d 1059 (Miss. Oct. 4, 2012).

§ 11-46-7. Exclusiveness of remedy; joinder of government employee; immunity for acts or omissions occurring within course and scope of employee’s duties; provision of defense for and payment of judgments or settlements of claims against employees; contribution or indemnification by employee.

JUDICIAL DECISIONS

4. Applicability.

Injured motorist’s negligence action against a county was governed by the provisions of the Mississippi Tort Claims Act (MTCA), Miss. Code Ann. § 11-46-1 et seq., because the MTCA was the exclusive

remedy for claims against governmental entities and their employees. *Alexander v. Newton County*, — So. 2d —, 2013 Miss. App. LEXIS 197 (Miss. Ct. App. Apr. 23, 2013).

§ 11-46-9. Exemption of governmental entity from liability on claims based on specified circumstances.

JUDICIAL DECISIONS

1. In general.
5. Adequate governmental services.
6. Discretionary functions.
- 6.5. Ministerial duty.
7. Police or fire protection.
- 7.5. Immunity.
8. Illustrative cases.

the custody of the Department of Corrections when the inmate’s claims arose. *Tillman v. Miss. Dep’t of Corr.*, 95 So. 3d 716 (Miss. Ct. App. 2012).

5. Adequate governmental services.**1. In general.**

Inmate’s claims against the Department of Corrections—for failure to release the inmate upon completion of the inmate’s sentence—were barred by Miss. Code Ann. § 11-46-9(1)(m) because the inmate did not seek administrative or other relief during the three and a half months that the inmate claimed the inmate was unlawfully detained, and the inmate was unquestionably confined in

In promoting a fund-raising event to raise funds for a state school serving people who suffered from mental retardation, the Mississippi Department of Mental Health (MDMH) was immune from tort liability under Miss. Code Ann. § 11-46-9 of the Mississippi Tort Claims Act, Miss. Code Ann. §§ 11-46-1 to 11-46-23, for a patron’s negligence action after the patron fell down steps; the MDMH’s promotion involved social and economic policy decisions, and was a discretionary function that qualified for immunity.

Miss. Dep't of Mental Health & Ellisville State Sch. v. Shaw, 45 So. 3d 656 (Miss. 2010).

6. Discretionary functions.

Although a county pleaded the affirmative defense of immunity under the Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-1 et seq., in its answer to a negligence action, the county waived the defense because the county actively participated in the litigation and the county's two-year-and-four-month delay in pursuing the affirmative defense of immunity under Miss. Code Ann. § 11-46-9(1)(d) was unreasonable and unnecessary. *Alexander v. Newton County*, — So. 2d —, 2013 Miss. App. LEXIS 197 (Miss. Ct. App. Apr. 23, 2013).

Mississippi Department of Transportation (MDOT) was immune from suit under Miss. Code Ann. § 11-46-9(1)(d) as Miss. Code Ann. § 65-1-65 did not impose any specific directives as to the time, manner, and conditions for carrying out MDOT's duty to maintain highways, and the duty to remove trees from the right-of-way was discretionary; MDOT was not liable for the driver's injuries arising out of road maintenance. *Little v. Miss. DOT*, — So. 3d —, 2012 Miss. App. LEXIS 627 (Miss. Ct. App. Oct. 9, 2012).

Evidence supported the conclusion that the city's refusal to extend new water service to the subdivision was based upon a perceived lack of adequate fire flow pressure in the water line, and although that perception turned out to be incorrect, even if the city's conduct rose to the level of negligence, that did not amount to an abuse of discretion, nor did it show that the city's decision to deny new water service was arbitrary and capricious. The developer's evidence was insufficient to overcome the city's entitlement to immunity under Miss. Code Ann. §§ 11-46-9(1)(d), (g), and (h). *L&F Homes & Dev., LLC v. City of Gulfport*, — F. Supp. 2d —, 2012 U.S. Dist. LEXIS 100855 (S.D. Miss. July 20, 2012).

6.5. Ministerial duty.

Mississippi Department of Transportation (MDOT) was not immune in a wrongful death claim alleging that a failure to place warning signs around a highway

culvert, as required by Miss. Code Ann. § 65-21-1, resulted in an auto accident that caused the decedent's death because § 65-21-1 imposed a ministerial duty, and, as Miss. Code Ann. § 63-3-301 and Miss. Code Ann. § 63-3-303 included no language suggesting abrogation or repeal of § 65-21-1, that section narrowly, precisely, and specifically requiring warning posts around culverts remained in effect as an exception to the general rule of § 63-3-303 that the MDOT had discretion over such placement; Miss. Code Ann. § 65-21-1 controlled the specific issue of guide and warning posts around culverts, and § 63-3-303 controlled the discretionary placement of traffic devices that were not the subject of a specific statutory mandate. *Miss. DOT v. Nosef*, 110 So. 3d 317 (Miss. 2013).

7. Police or fire protection.

Volunteer firefighter was not immune from suit under the Mississippi Tort Claims Act (MTCA) for claims arising from an automobile accident because the volunteer fire department was not a political subdivision of the State. Under Miss. Code Ann. § 95-9-1(3)(b), the firefighter could be liable for negligent operation of a vehicle. *Poppenheimer v. Estate of Coyle*, 98 So. 3d 1059 (Miss. Oct. 4, 2012).

7.5. Immunity.

Mississippi did not have to show that it qualified for immunity under Miss. Code Ann. § 11-46-9(1)(v) as it was immune from a driver's suit under Miss. Code Ann. § 11-46-9(1)(d); if an entity qualified for immunity under § 11-46-9(1)(d), the conditions for immunity under § 11-46-9(1)(v) were irrelevant. *Little v. Miss. DOT*, — So. 3d —, 2012 Miss. App. LEXIS 627 (Miss. Ct. App. Oct. 9, 2012).

8. Illustrative cases.

Provisions of Miss. Code Ann. § 11-46-9(1)(c), which provided government immunity for duties or activities related to police or fire protection, applied to a vehicle accident involving a Mississippi Forestry Commission employee who had fire suppression duties; the statute did not limit immunity to police officers and fire departments. *Herndon v. Miss. Forestry Comm'n*, 67 So. 3d 788 (Miss. Ct. App.

2010), writ of certiorari denied by 69 So. 3d 9, 2011 Miss. LEXIS 380 (Miss. 2011).

Trial court erred in granting a sheriff, county, and surety summary judgment on an individual's claims of false imprisonment and negligence where the individual raised issues of fact as to whether the sheriff or his deputies complied with their

duties in accepting surrender from a bail bondsman, and whether they evinced a reckless disregard for the individual's safety and well-being in accepting his surrender. *Brooks v. Pennington*, 995 So. 2d 733 (Miss. Ct. App. 2007), writ of certiorari dismissed by 2008 Miss. LEXIS 680 (Miss. Dec. 4, 2008).

§ 11-46-11. Statute of limitations; notice of claim requirements; savings clause in favor of infants and those of unsound mind.

JUDICIAL DECISIONS

15. Illustrative cases.

Where the deceased patient's daughter brought a medical malpractice suit against the University of Mississippi Medical Center after it was discovered that a sponge was left in the patient's body during a surgery performed on September 1, 2004, plaintiff sent a notice-of-claim letter to the medical center on November 21, 2005 and filed a medical negligence

suit on February 21, 2006. The Supreme Court of Mississippi held that plaintiff's survival claim based on the negligent act of leaving the sponge in the patient accrued more than one year prior to providing notice; thus, that claim was barred by the statute of limitations. *Univ. of Miss. Med. Ctr. v. McGee*, 999 So. 2d 837 (Miss. 2008).

§ 11-46-15. Limitation of liability; exemplary or punitive damages; interest; attorney's fees; reduction of award.

JUDICIAL DECISIONS

4. Governmental immunity.
5. Determination of damages.

4. Governmental immunity.

Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-15(2) bars assessment of punitive damages against state agencies. *Claiborne v. Miss. Bd. of Pharm.*, — F. Supp. 2d —, 2011 U.S. Dist. LEXIS 93849 (S.D. Miss. Aug. 22, 2011).

5. Determination of damages.

Because a decedent began to decline in physical and mental health shortly after a

fall upon exiting a city transport bus that sent the decedent to a hospital, and an expert causally linked the deterioration and rising medical costs to a city's negligent act, the estate administrator was awarded damages of \$250,000 under the Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-15(1)(b). *City of Jackson v. Estate of Stewart*, 48 So. 3d 502 (Miss. 2010).

§ 11-46-17. Creation of Tort Claims Fund; liability insurance.

(1) There is hereby created in the State Treasury a special fund to be known as the "Tort Claims Fund."

All monies that the Department of Finance and Administration receives and collects under the provisions of subsection (2) of this section and all funds that the Legislature appropriates for use by the board in administering the

provisions of this chapter shall be deposited in the fund. All monies in the fund may be expended by the board for any and all purposes for which the board is authorized to expend funds under the provisions of this chapter. All interest earned from the investment of monies in the fund shall be credited to the fund. Monies remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund.

(2) From and after July 1, 1993, each governmental entity other than political subdivisions shall participate in a comprehensive plan of self-insurance or one or more policies of liability insurance or combination of the two, all to be administered by the Department of Finance and Administration. The plan shall provide coverage to each of such governmental entities for every risk for which the board determines the respective governmental entities to be liable in the event of a claim or suit for injuries under the provisions of this chapter, including claims or suits for injuries from the use or operation of motor vehicles; the board may allow the plan to contain any reasonable limitations or exclusions not contrary to Mississippi state statutes or case law as are normally included in commercial liability insurance policies generally available to governmental entities. The plan may also provide coverage for liabilities outside the provisions of this chapter, including, but not limited to, liabilities arising from Sections 1983 through 1987 of Title 42 of the United States Code and liabilities from actions brought in foreign jurisdictions, and the board shall establish limits of coverage for such liabilities. Each governmental entity participating in the plan shall make payments to the board in such amounts, times and manner determined by the board as the board deems necessary to provide sufficient funds to be available for payment by the board of the costs it incurs in providing coverage for the governmental entity. Each governmental entity of the state other than the political subdivisions thereof participating in the plan procured by the board shall be issued by the board a certificate of coverage whose form and content shall be determined by the board but which shall have the effect of certifying that, in the opinion of the board, each of such governmental entities is adequately insured.

Before July 1, 1993, the Board of Trustees of State Institutions of Higher Learning may provide liability coverage for each university, department, trustee, employee, volunteer, facility and activity as the board of trustees, in its discretion, shall determine advisable. If liability coverage, either through insurance policies or self-insurance retention is in effect, immunity from suit shall be waived only to the limit of liability established by the insurance or self-insurance program. From and after July 1, 1993, liability coverage established by the board of trustees must conform to the provisions of this section and must receive approval from the board. Should the board reject a plan, the board of trustees shall participate in the liability program for state agencies established by the board.

(3) All political subdivisions shall, from and after October 1, 1993, obtain a policy or policies of insurance, establish self-insurance reserves, or provide a combination of insurance and reserves as necessary to cover all risks of claims and suits for which political subdivisions may be liable under this chapter; a

political subdivision shall not be required to obtain pollution liability insurance. However, this shall not limit any cause of action against a political subdivision relative to limits of liability under the Tort Claims Act. The policy or policies of insurance or self-insurance may contain any reasonable limitations or exclusions not contrary to Mississippi state statutes or case law as are normally included in commercial liability insurance policies generally available to political subdivisions. All the plans of insurance or reserves or combination of insurance and reserves shall be submitted for approval to the board. The board shall issue a certificate of coverage to each political subdivision whose plan it approves in the same manner as provided in subsection (2) of this section. Whenever any political subdivision fails to obtain the board's approval of its plan, the political subdivision shall act in accordance with the rules and regulations of the board and obtain a satisfactory plan of insurance or reserves or combination of insurance and reserves to be approved by the board.

(4) Any governmental entity may purchase liability insurance to cover claims in excess of the amounts provided for in Section 11-46-15 and may be sued by anyone in excess of the amounts provided for in Section 11-46-15 to the extent of the excess insurance carried; however, the immunity from suit above the amounts provided for in Section 11-46-15 shall be waived only to the extent of excess liability insurance carried.

(5) Any two (2) or more political subdivisions may contract to pool their liabilities as a group under this chapter. The pooling agreements and contracts may provide for the purchase of one or more policies of liability insurance or the establishment of self-insurance reserves or a combination of insurance and reserves and shall be subject to approval by the board in the manner provided in subsections (2) and (3) of this section.

(6) The board shall have subrogation rights against a third party for amounts paid out of any plan of self-insurance administered by the board pursuant to this section on behalf of a governmental entity that is not a political subdivision as a result of damages caused under circumstances creating a cause of action in favor of such governmental entity against a third party. The board shall deposit in the Tort Claims Fund all monies received in connection with the settlement or payment of any claim, including proceeds from the sale of salvage.

SOURCES: Laws, 1984, ch. 495; reenacted and amended, Laws, 1985, ch. 474, § 9; reenacted and amended, Laws, 1986, ch. 438, § 4; Laws, 1987, ch. 483, § 9; Laws, 1988, ch. 442, § 6; Laws, 1988, ch. 479, § 4; Laws, 1989, ch. 537, § 6; Laws, 1990, ch. 518, § 7; Laws, 1991, ch. 618, § 7; Laws, 1992, ch. 491 § 8; Laws, 1993, ch. 476, § 6; Laws, 1995, ch. 568, § 1; Laws, 1996, ch. 377, § 1; Laws, 1998, ch. 496, § 1; Laws, 2013, ch. 385, § 2, eff from and after passage (approved Mar. 20, 2013.)

Editor's Note — Laws of 2013, ch. 385, § 6, effective March 20, 2013, provides: "SECTION 6. This act shall take effect and be in force from and after its passage [approved March 20, 2013]; volunteer fire departments shall have until July 1, 2013, to obtain and have approved the insurance policies of self-insurance reserves or combination thereof required for political subdivisions under the Tort Claims Act."

Amendment Notes — The 2013 amendment, in (2), substituted “or” for “and/or” and inserted “or combination of the two, all to be” in the first sentence; deleted “In addition to the coverage authorized in the preceding sentence” at the beginning of the third sentence; in (3), substituted “or reserves or combination of insurance and reserves” for “and/or reserves” in the fourth and last sentences; in (5), substituted “may contract to pool” for “are hereby authorized to enter into agreement and to contract between and among themselves for the purpose of pooling” in the first sentence and substituted “or” for “and/or” and inserted “or a combination of insurance and reserves” in the second sentence; and in (6), inserted “that is not a political subdivision” in the first sentence; and made minor stylistic changes throughout.

CHAPTER 51

Appeals

§ 11-51-3. Appeals to Supreme Court.

JUDICIAL DECISIONS

12. Finality of determination.
13. —Nature and character of final determination.
14. —Final judgments and decrees.

12. Finality of determination.

13. —Nature and character of final determination.

State supreme court was without jurisdiction to entertain an appeal under Miss. Code Ann. § 11-51-3 because an order setting aside a prior order of reinstatement did not adjudicate the case on its

merits, and left a pending motion to be dealt with by the assigned judge. *Lafontaine v. Holliday*, 110 So. 3d 785 (Miss. 2013).

14. —Final judgments and decrees.

Chancellor's order that found father in contempt for failing to pay child support but did not determine the amount of the arrearage or the amount of future child support the father would be obligated to pay was not a final order and could not be considered on appeal. *Raven v. Boyd*, 111 So. 3d 690 (Miss. Ct. App. 2013).

§ 11-51-75. Appeal to circuit court from board of supervisors, municipal authorities.

JUDICIAL DECISIONS

3. Bill of exceptions in general.
3. —Signing bill of exceptions.
6. Persons entitled to appeal.
7. Time for appeal.

3. Bill of exceptions in general.

3. —Signing bill of exceptions.

Circuit court lacked jurisdiction over a high school's attempted appeal of an expulsion decision by a school board because the student's bill of exceptions lacked the signature of the school board president and, as such, the bill of exceptions did not comply with Miss. Code Ann. §§ 37-7-115

and 11-51-75. *M.L.R. v. Pontotoc City Sch. Dist. Bd. of Trs.*, 46 So. 3d 874 (Miss. Ct. App. 2010).

McKee's bill of exceptions did not comply with the procedural requirements set forth in Miss. Code Ann. § 11-51-75 because it did not contain the mayor's signature, and a city also failed to comply with the requirements because, rather than noting the portions of the resident's bill of exceptions that it deemed incorrect and allowing him to amend it, it filed its own bill of exceptions; however, the court of appeals did not dismiss for lack of subject matter jurisdiction the resident's

appeal of a decision of the city's board of aldermen because the bills of exceptions contained the pertinent and important facts and documents and constituted a record upon which the court of appeals could intelligently act. *McKee v. City of Starkville*, 97 So. 3d 97 (Miss. Ct. App. 2012).

6. Persons entitled to appeal.

In an appeal under Miss. Code Ann. § 11-51-75 by vendors of a city council's decision to award a contract for the operation of a wastewater facility to a partnership, the circuit court properly denied the partnership's motion to intervene because the partnership was not aggrieved and

was neither a proper, necessary, nor indispensable party. *City of Jackson v. United Water Servs.*, 47 So. 3d 1160 (Miss. 2010).

7. Time for appeal.

Complaint that was amended to include a claim under Miss. Code Ann. § 11-51-75 (2002), which the trial court advised would provide for review of a decision of municipal authorities essentially disqualifying a candidate from a mayoral election, was properly dismissed. The claim was not made within ten days of the municipal authorities' decision. *Town of Terry v. Smith*, 48 So. 3d 507 (Miss. 2010).

§ 11-51-79. Appeals from the county court.

JUDICIAL DECISIONS

2. Jurisdiction.

On remand, it was of no consequence that one of the consolidated cases originated in county court because Miss. Code Ann. § 11-51-79 required that the replevin and mechanic's lien cases be remanded to the circuit court, not the county court, for

further proceedings and consideration of all claims, possession, and enforcement of liens. *Caterpillar Fin. Servs. Corp. v. Burroughs Diesel, Inc.*, — So. 2d —, 2013 Miss. App. LEXIS 175 (Miss. Ct. App. Apr. 16, 2013).

§ 11-51-93. Certiorari proceedings in circuit court.

JUDICIAL DECISIONS

13. Dismissal of certiorari.

Circuit court did not abuse its discretion by failing to grant a writ of certiorari, pursuant to Miss. Code Ann. § 11-51-93, based on an affidavit submitted by petitioner regarding broad statements made by a county prosecutor as to the prosecutor's memory about in absentia traffic tickets in general; the circuit court did not rule the affidavit was not relevant or admissible, within the meaning of Miss. R. Evid. 406, rather the circuit court found the affidavit alone was insufficient to grant certiorari. *Abraham v. State*, 61 So. 3d 199 (Miss. Ct. App. 2010).

Circuit court did not abuse its discretion in denying a petition for a writ of certio-

rari, Miss. Code Ann. § 11-51-93, after a justice court found petitioner guilty in absentia of two traffic offenses, because petitioner did not provide the required justice court record for the circuit court to review and, as such, petitioner did not show "good cause" as to why his petition should have been granted; the record did not indicate any effort by petitioner to secure the justice court record or any evidence the justice court ever received notice of petitioner's attempt to file an appeal of its judgment, as required by Miss. Unif. Cir. & Cty. R. 5.04. *Abraham v. State*, 61 So. 3d 199 (Miss. Ct. App. 2010).

CHAPTER 55

Litigation Accountability Act of 1988

§ 11-55-3. Definitions.

JUDICIAL DECISIONS

2. "Frivolous."

Father's appeal of a chancellor's denial of the father's recusal motion was frivolous and thus without substantial justification because the chancellor had recused

himself long before the appeal, and the father was aware of the recusal. *Balius v. Gaines*, 95 So. 3d 730 (Miss. Ct. App. 2012).

§ 11-55-5. Assessment of attorney fees and costs against attorney or party for meritless action, claim or defense, unwarranted delay, or unnecessary proceedings.

JUDICIAL DECISIONS

3. Payment of attorneys' fees awarded.

Attorney's fees were awarded in favor of and against the father in a custody proceeding even though the father was proceeding pro se in an appeal of a chancellor's denial of the father's recusal motion.

The appeal was without substantial justification because the chancellor had recused himself long before the appeal, and the father was aware of the recusal. *Balius v. Gaines*, 95 So. 3d 730 (Miss. Ct. App. 2012).

TITLE 13
EVIDENCE, PROCESS AND JURIES

Chapter 5.	Juries	13-5-1
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CHAPTER 5

Juries

SEC.
13-5-41. Number of grand jurors.

§ 13-5-41. Number of grand jurors.

The number of grand jurors shall not be less than fifteen (15) nor more than twenty-five (25), in the discretion of the court.

SOURCES: Codes, 1892, § 2371; 1906, § 2700; Hemingway's 1917, § 2193; 1930, § 2046; 1942, § 1779; Laws, 1896, ch. 84; Laws, 1974, ch. 378, § 9; Laws, 2013, ch. 476, § 1, eff from and after July 1, 2013.

Amendment Notes — The 2013 amendment substituted “twenty-five (25)” for “twenty (20).”

TITLE 15

LIMITATIONS OF ACTIONS AND PREVENTION OF FRAUDS

CHAPTER 1

Limitation of Actions

§ 15-1-5. Period of limitations shall not be changed by contract.

JUDICIAL DECISIONS

7. Miscellaneous.

Claim by homeowners against a builder under the New Home Warranty Act (NHWA), Miss. Code Ann. § 83-58-1 et seq., was not subject to Miss. Code Ann. § 15-1-5 because the NHWA limitations period applied over the more general period in Miss. Code Ann. § 15-1-41. *Townes v. Rusty Ellis Builder, Inc.*, 98 So. 3d 1046 (Miss. 2012).

When homeowners and a builder entered into an agreement purportedly toll-

ing limitations periods applicable to the homeowners' claims against the builder for structural defects in the homeowners' home, the homeowners' common-law claims were time-barred because (1) the claims fell under Miss. Code Ann. § 15-1-41's statute of repose, and (2) Miss. Code Ann. § 15-1-5 barred contracts to change a limitations period. *Townes v. Rusty Ellis Builder, Inc.*, 98 So. 3d 1046 (Miss. 2012).

§ 15-1-13. Ten years' adverse possession gives title; exceptions.

JUDICIAL DECISIONS

1. Possession in general.
2. —Nature of possession, generally.
4. — —Particular cases.

1. Possession in general.

2. —Nature of possession, generally.

4. — —Particular cases.

Chancery court did not err in finding a claimant did not adversely possess approximately eighty acres of unimproved land, in accordance with Miss. Code Ann.

§ 15-1-13(1), because testimony by two owners of the land established they believed the claimant was a co-tenant and given the claimant's illusory position as a co-tenant, none of the claimant's actions would have given the owners notice he was attempting to adversely possess the property; the claimant and the owners were relatives. *Dean v. Slade*, 63 So. 3d 1230 (Miss. Ct. App. 2010), writ of certiorari denied by 63 So. 3d 1229, 2011 Miss. LEXIS 310 (Miss. 2011).

§ 15-1-41. Limitations applicable to actions arising from deficiencies in constructions, or improvements to real property.

JUDICIAL DECISIONS

3. Applicability.

Claim by homeowners against a builder under the New Home Warranty Act (NHW), Miss. Code Ann. § 83-58-1 et seq., was not subject to Miss. Code Ann. § 15-1-5 because the NHWA limitations period applied over the more general period in Miss. Code Ann. § 15-1-41. *Townes v. Rusty Ellis Builder, Inc.*, 98 So. 3d 1046 (Miss. 2012).

When homeowners and a builder entered into an agreement purportedly toll-

ing limitations periods applicable to the homeowners' claims against the builder for structural defects in the homeowners' home, the homeowners' common-law claims were time-barred because (1) the claims fell under Miss. Code Ann. § 15-1-41's statute of repose, and (2) Miss. Code Ann. § 15-1-5 barred contracts to change a limitations period. *Townes v. Rusty Ellis Builder, Inc.*, 98 So. 3d 1046 (Miss. 2012).

§ 15-1-49. Limitations applicable to actions not otherwise specifically provided for.

JUDICIAL DECISIONS

27. Running of limitation period, generally.

28. — Accrual of cause of action; miscellaneous.

38. — Tolling of statute.

39. Particular cases; miscellaneous.

40. — Insurance.

27. Running of limitation period, generally.

28. — Accrual of cause of action; miscellaneous.

Welder's products liability and failure to warn action, filed on November 14, 2005, against two manufacturers was time-barred pursuant to Miss. Code Ann. § 15-1-49 because the statute of limitations began to run in September 2002 when the welder knew of his Parkinsonism, rather than October 2005 when the welder was diagnosed with manganism; the welder's cause of action accrued upon the discovery of the injury, not the cause of the injury. *Lincoln Elec. Co. v. McLemore*, 54 So. 3d 833 (Miss. 2010).

38. — Tolling of statute.

Welder's products liability and failure to warn action, filed on August 31, 2004,

against two manufacturers did not toll the three-year statute of limitations in Miss. Code Ann. § 15-1-49 because the welder voluntarily dismissed the complaint on December 28, 2004; the welder's subsequent complaint filed on November 14, 2005 was time-barred under § 15-1-49 because the welder knew of the injury on September 3, 2002. *Lincoln Elec. Co. v. McLemore*, 54 So. 3d 833 (Miss. 2010).

39. Particular cases; miscellaneous.

40. — Insurance.

Insured's action against an insurer for uninsured/underinsured motorist coverage, filed on September 26, 2008, was time-barred under Miss. Code Ann. § 15-1-49 because the statute of limitations began to run on November 30, 2004, the date a default judgment was entered against a driver, proving the driver was uninsured and the tortfeasor; the insured was aware of her damages on the date of the default judgment. *Madison v. Geico Gen. Ins. Co.*, 49 So. 3d 1166 (Miss. Ct. App. Dec. 14, 2010).

CHAPTER 3

Prevention of Frauds

ARTICLE 1.

IN GENERAL.

§ 15-3-1. Certain contracts to be in writing.

JUDICIAL DECISIONS

2. Applicability.

Where a telephone company's constructive license to continue and use telephone lines and fixtures derived from Miss. Code Ann. § 77-9-715, the constructive license did not violate the statute of frauds, Miss. Code Ann. § 15-3-1, because the statute of frauds did not apply given that the tele-

phone company's rights arose by operation of law and did not come from a contract. *Marlow, LLC v. BellSouth Telecomms., Inc.*, — F. Supp. 2d —, 2011 U.S. Dist. LEXIS 54309 (S.D. Miss. May 18, 2011), affirmed in part and reversed in part by 686 F.3d 303, 2012 U.S. App. LEXIS 13425 (5th Cir. Miss. 2012).

ARTICLE 3.

UNIFORM FRAUDULENT TRANSFER ACT.

§ 15-3-101. Definitions.

JUDICIAL DECISIONS

1. Claim against only one tenant.

Decedent's ex-wife was not entitled to execute a judgment against real estate formerly jointly owned by the decedent and his widow but conveyed by four deeds to the widow's sister, although the late-recorded deeds were void as to the ex-wife under Miss. Code Ann. § 89-5-3, because

under Miss. Code Ann. § 15-3-101(b)(iii) (Supp. 2010) the property was not subject to a claim against only one joint tenant, and any right the ex-wife had to execute her judgment on the jointly held property ceased to exist upon the decedent's death. *Kelly v. Roby* (In re Estate of Roby), 84 So. 3d 786 (Miss. Ct. App. June 28, 2011).

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FIREFIGHTERS AND FIRE DEPARTMENTS.

Sovereign immunity.

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